

### REMARKS

In response to the office action mailed 07 January 2009, please consider the following remarks.

The office action acknowledges applicants' response filed 12 September 2008 but does not address applicants' concern stated in that response that notwithstanding the procedure at Section 1002.02(d)2 of the Manual of Patent Examining Procedure prosecution was reopened after the filing of an appeal without the required approval of the Supervisory Patent Examiner. Like the earlier office action, the 07 January 2009 office action does not have any indication of consideration or approval by a supervisory patent examiner. The extended prosecution (office action rejections mailed 09 September 2004, 18 May 2005, 28 June 2006, 20 June 2007 and 19 March 2008) with applicants having filed two appeal briefs (filed 21 April 2006 and 29 January 2007) and neither of applicants' appeal briefs have been forwarded to the Board for consideration demonstrates an abuse of discretion. The previous response requested "[i]n view of the above noted procedure at Section 1002.02(d)2 and the present new ground of rejection, applicants request that any future rejection be authorized by a supervisory patent examiner" but apparently this is simply disregarded. The request for supervisory signature on each office action is hereby repeated.

#### The rejection of claims 1-13.

Claims 1-13 stand rejected over Admasu et al. (U.S. Publication No. 2002/0032601) in view of Fulcher et al. (U.S. Patent No. 6,505,774).

The office action rejection states that

Admasu does not explicitly disclose means for providing two-way video and audio communication with a monitoring facility remote from said payment terminal.

However this feature is known in the art, as evidenced by Fulcher. In particular, Fulcher suggests that the system having means for providing two-way video and audio communication with a monitoring facility remote from said payment terminal (See Fulcher, Col. 11, lines 19-67; Col. 13, lines 1-67; Col. 21, lines 34-67).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have included the feature of Fulcher within the system of Admasu with the motivation of providing a method and apparatus for the automated collection of fees and dispensing tickets. In particular, it would be advantageous to provide a method and apparatus for automatically collecting fees and making a record of payment that can be easily modified to perform different or additional functions. In addition, it would be advantageous to provide such a method and device that is economical to operate and reliable (See Fulcher, Col. 1, lines 23-30).

Claim 1 is directed to an automated payment system for a parking facility, comprising an exit gate operable to control egress from the parking facility; and a payment terminal including means for assessing a payment amount, means for receiving the payment amount, means for opening said exit gate upon receipt of the payment amount, and means for providing two-way video and audio communication with a monitoring facility remote from said payment terminal. Applicants' disclosure (see especially Fig. 1) includes an exit facility 10 having a payment terminal 20, a video camera 40, a video display 42 and speakers/microphones 43, 44. Applicants' disclosure (U.S. Publication No. 2003/0014316 at paragraph 24) states that

the payment terminal 20 is remotely connected to a workstation occupied by a human. A video camera transmits an image of the attendant to the payment terminal 20 for display on the monitor 42. Likewise, two-way communication between the attendant and the driver is facilitated by the speakers/microphones 43 and 44. The video camera 40 transmits an image of the person at the payment terminal to provide the live attendant with commensurate human interaction.

Neither Admasu et al. nor Fulcher et al. disclose applicants' disclosed structure (or an equivalent) for providing two-way video and audio communication with a monitoring facility remote from said payment terminal. Admasu et al. does not provide a video camera and video display at an exit terminal. In Admasu et al. the driver presents an intelligent card 56 at the exit gate, there is no video camera and display at the exit. Fulcher et al. does not provide a video camera and video display at an exit terminal.

Fulcher does not teach or suggest "two-way" audio and video as recited in the claims.

Fulcher at column 11, lines 53-61 recites

The programmable computer 6 also may include a communications device 508 such as a modem or network card to enable communications between the machine 2 and offsite personnel 510 or computers 512 over a communications link 514. Suitable communications links 514 include fiber optic cabling, twisted pair or coaxial network cabling, a land line or wireless telephone, a radio link, or any other link suitable for the transmission of digital data.

This is not a disclosure of a live "two-way" audio/video connection.

Fulcher at column 13, lines 34-51 recites

The speaker 522 and microphone 42 are generally associated with the sound card 504. The provision of a speaker 522 enables the machine 2 to provide voice prompts and commands to a user. The provision of a microphone 42 allows a user to provide voice commands to the machine 2 and to communicate with personnel over a communications link established by the machine 2. This also allows the machine 2 to dial 911 in any emergency, as described in greater detail below. The camera 520 enables the recordation of visual images, either still or moving, of users. This capability is useful in apprehending vandals or thieves who have targeted the machine 2, and thus can also serve as a deterrent from such crimes. The shock sensor 516 may be used to identify attempts at breaking into the machine 2, and thus can be used to trigger an audible warning or the operation of the camera. A radar sensor 36 is provided to wake up the machine 2 when patrons approach, allowing the machine 2 to conserve energy and to greet users.

The disclosure in Fulcher does not teach/suggest a live "two-way" audio/video connection. At best one may assume an audio connection with perhaps a video recording that may/may not be sent to a remote station (nothing in Fulcher et al. suggests it is the same station as the audio station).

Accordingly, Admasu et al. and Fulcher et al. cannot not and do not combine to arrive at the claimed automated payment system for a parking facility comprising an exit gate operable to control egress from the parking facility and... means for providing two-way video and audio communication with a monitoring facility....

The statement of obviousness in the rejection urges that it would have been obvious to have included the Fulcher et al.'s audio visual "for the automated collection of fees and dispensing tickets," but Admasu et al. has an automated system for collection of fees so there is no reason to modify Admasu et al. to add this feature that is already there.

The statement of obviousness in the rejection urges that it would have been obvious to have included the Fulcher et al.'s audio visual "to provide a method and apparatus for automatically collecting fees and making a record of payment that can be easily modified to perform different or additional functions." Again, this is already in Admasu et al. and there is no reason to modify Admasu et al.

The statement of obviousness in the rejection urges that it would have been obvious to have included the Fulcher et al.'s audio visual "to provide such a method and device that is economical to operate and reliable." There is no reason to believe that Admasu et al. is not economical and reliable and there is nothing in Fulcher et al. suggesting to modify Admasu et al. to make it more economical or reliable.

There is nothing in either Admasu et al. or Fulcher et al. that would have motivated one of ordinary skill in the art to provide Admasu et al.'s exit with applicants' means for providing two-way video and audio communication as recited in claim 1. The examiner bears the initial burden of presenting a prima facie case of obviousness.<sup>1</sup> As noted above, the present rejection does not provide proper motivation for the alleged combination of Admasu et al. and Martinez et al. and thus does not provide a prima facie case of obviousness.

Claim 5 includes a limitation similar to that in claim 1 discussed above, i.e., claim 5 requires a means for providing two-way video and audio communication between said central monitoring facility and said payment terminal at each of said plurality of exit facilities. Claim 5 avoids the rejection for at least the same reasoning as noted above with respect to claim 1.

Claim 10 is similar to claim 1 in that claim 10 requires an automated payment system comprising an apparatus for calculating a payment amount, an apparatus for receiving the payment amount, a gate apparatus operable to control access to the facility in response to receipt of the payment amount; and a two-way video and audio communication system linking the automated payment system with a monitoring facility remote from the automated payment facility.

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<sup>1</sup> See *In re Rijckaert*, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993).

For all of the above reasons, independent claims 1, 5 and 10 (and dependent claims 2-4, 6-9 and 11-13) avoid the combination of Admasu et al. and Fulcher et al. The allegation in the office action that there is motivation for modification of Admasu et al. appears to stem from an improper hindsight attempt to reconstruct applicants' invention from bits and pieces in the prior art. Such attempt is improper. See, *In re Warner*, 379 F.2d 1011, 1017, 154 USPQ 173, 177-78 (CCPA 1967), cert. denied, 389 U.S. 1057 (1968). This principle was affirmed by the Court's statement that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR*, 127 S.Ct. at 1741 (quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006)).

The test for obviousness is "whether the teachings of the prior art, taken as a whole, would have made obvious the claimed invention."<sup>2</sup> Applicants' disclosure relates to automated payment at an exit and discusses audio and video at such exit. None of the prior art of record address the problems and solutions offered by applicants' invention. The prior art of record does not teach or suggest the claimed combination of elements including audio and video at the exit. In at least this regard, the prior art of record does not even address the subject matter as a whole of the present invention. For at least this additional reason, there is no prima facie case for the above-noted rejection of the present claims.

#### **The Telephone Discussion With Supervisory Primary Examiner Matthew Gart.**

The telephone discussion with Supervisory Primary Examiner Matthew Gart on 13 January 2009 is acknowledged with appreciation. During the discussion the claims were discussed and it was agreed that none of the prior art to date disclosed a two-way audio and video communication as disclosed by applicants. The above amendments were discussed and it was agreed that these amendments further clarify the two-way audio and video communication and that the claims as amended avoid the prior art and rejections of record. Claims 1, 5 and 10 are amended as shown above.

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<sup>2</sup> *In re Gorman*, 933 F.2d 982, 986, 18 USPQ2d 1885, 1888 (Fed.Cir. 1991).

**Conclusion.**

In view of the above, it is submitted that all of the remaining claims (Nos. 1-13) are in condition for allowance and such action is respectfully requested.

If there is any issue remaining to be resolved, the examiner is invited to telephone the undersigned at (202) 371-6348 so that resolution can be promptly effected.

It is requested that, if necessary to effect a timely response, this paper be considered a Petition for an Extension of Time sufficient to effect a timely response with the fee for such extensions and shortages in other fees, being charged, or any overpayment in fees being credited, to the Account of Barnes & Thornburg LLP, Deposit Account No. 10-0435 (37837-75702).

Respectfully submitted,

BARNES & THORNBURG LLP



Richard B. Lazarus

Reg. No. 48,215

Tel. No. (202) 371-6348